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ONE HUNDRED TWELFTH CONGRESS
Congress of the United States
House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

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WASHINGTON, DC 20515-6115

Majority (202) 225-2927
Minority (202) 225-3641

January 24, 2012

Mr. Bill Daley
Chief of Staff
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Mr. Jacob Lew
Chief of Staff Designee
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Dear Mr. Daley and Mr. Lew:

We are writing to you as part of our ongoing investigation into the negotiations and agreements made between representatives from the White House Office of Health Reform (WHOHR) and various health care industry stakeholders regarding health care reform legislation. This Committee has been requesting information on this matter for over two years. The White House has consistently refused our legitimate requests for information regarding this important piece of legislation, notwithstanding the fact that the President promised many times during the 2008 presidential campaign that the meetings and debates on any health care legislation would be broadcast to the public, and once in office promised to run the most open and transparent administration in history.

The January 30, 2012, *The New Yorker* piece, "The Obama Memos," details a number of memoranda prepared to assist the President in evaluating the administration's various approaches to passing a health care law. For example, a July 1, 2009, memorandum referenced in the article written by the Director of WHOHR Nancy-Ann DeParle discusses the policy options available in potential health care legislation:

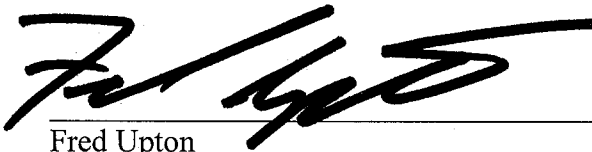
"On July 1, 2009, his top health-care adviser, Nancy-Ann DeParle, submitted a detailed nine-page policy memo asking whether the White House should consider including medical-malpractice reform in the legislation. Most Democrats opposed the idea, but the American Medical Association was pushing for it. 'Obviously, we shouldn't do anything that weighs down the overall effort,' Obama wrote back, in his characteristically cautious and reasonable style, 'but if this helps the AMA stay on board, we should explore it.'"

Another memorandum referenced in the article notes that as early as April 10, 2009, the President had agreed that a reconciliation pathway to passing a health care law should be pursued. A December 2009 memo reveals that the President agreed to budget gimmickry "by fiddling with the way it presented savings from Obama's health-care-reform bill." As these three memoranda are directly responsive to our many requests for information, we ask that these memoranda, and all other memoranda on the topic of health care reform, be submitted to the Committee.

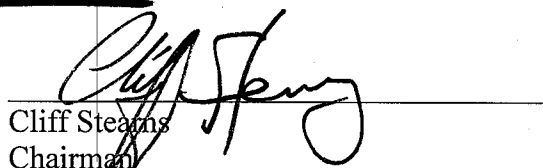
In the course of our repeated requests for information from the White House during the last two years we have clearly demonstrated both the legitimate Congressional interest in, and need for, these documents. These materials reference both the policies and decisions utilized in the health care reform process, and this is substantive information our oversight duties require us to review. Furthermore, it is outrageous that despite our multiple efforts to obtain information about the negotiations and deals entered into by the White House, Congress has only been provided with material previously made publicly available, while the administration selectively provides such information to *The New Yorker*. Finally, while the White House has so far studiously avoided asserting executive privilege and has simply refused to provide the requested information, by voluntarily providing this information to a reporter the White House has waived any right to refuse production of these materials based on claims of privilege.¹ The White House should provide these documents to Congress immediately.

Please provide these memoranda to the Committee by February 1, 2011. If you have any questions regarding this request, please contact Mr. Sean Hayes with Committee staff for Oversight and Investigations at (202) 225-2927.

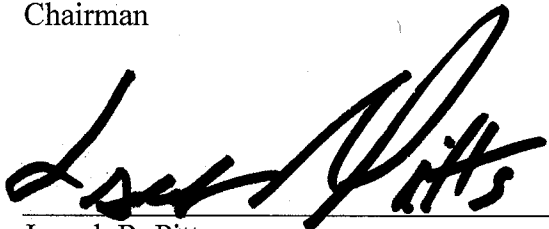
Sincerely,



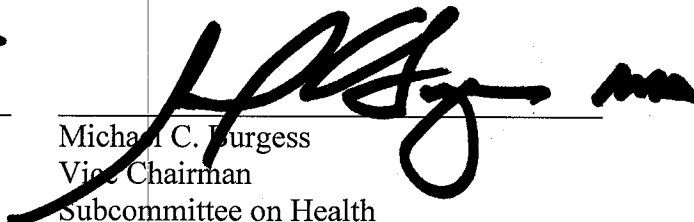
Fred Upton
Chairman



Cliff Stearns
Chairman
Subcommittee on Oversight and Investigations



Joseph R. Pitts
Chairman
Subcommittee on Health



Michael C. Burgess
Vice Chairman
Subcommittee on Health

¹ In *In Re Sealed Case* the D.C. Court of Appeals addressed this issue when it held the White House had waived claims of privilege in regards to documents it voluntarily revealed to third parties outside the White House. 121 F.3d 729, 741-42 (D.C. Cir. 1997).

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cc: The Honorable Henry A. Waxman, Ranking Member

The Honorable Diana DeGette, Ranking Member
Subcommittee on Oversight and Investigations

The Honorable Frank Pallone, Jr., Ranking Member
Subcommittee on Health